

SYLVIA QUAST
Regional Counsel
United States Environmental Protection Agency, Region IX

KIMBERLY WELLS
Attorney Advisor
United States Environmental Protection Agency, Region IX
75 Hawthorne Street
San Francisco, California 94105
(415) 972-3056

Attorneys for Complainant

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX**

75 Hawthorne Street
San Francisco, California 94105

IN THE MATTER OF:

DOCKET NO. UIC-09-2017-_____

Kamehameha Schools
Respondent.

**CONSENT AGREEMENT
AND
FINAL ORDER**

Proceedings under Sections 1423(c) of the
Safe Drinking Water Act,
42 U.S.C. § 300h-2(c).

CONSENT AGREEMENT

I. AUTHORITIES AND PARTIES

1. The United States Environmental Protection Agency (“EPA”), Region IX and Trustees of the Estate of Bernice Pauahi Bishop, doing business as Kamehameha Schools, (“Respondent”) (collectively the “Parties”) agree to settle this matter and consent to the filing of this Consent Agreement and Final Order (“CA/FO”). The CA/FO commences and concludes this proceeding in accordance with 40 C.F.R. §§ 22.13(b), 22.18(b)(2) and 22.45(b).

2. This is a civil administrative action brought by EPA Region IX against Respondent pursuant to Section 1423(c) of the Safe Drinking Water Act (“SDWA”), 42 U.S.C. §

300h-2(c), for violations of the SDWA and the Underground Injection Control (“UIC”) requirements set forth at 40 C.F.R. Part 144.

3. Complainant is the Director of the Enforcement Division, EPA Region IX. The Administrator of EPA delegated to the Regional Administrator of EPA Region IX the authority to bring and settle this action under the SDWA. In turn, the Regional Administrator further delegated the authority to bring this action and sign a consent agreement settling this action under the SDWA to the Director of the Enforcement Division.

4. Respondent is a charitable trust headquartered at 567 South King Street, Honolulu, Hawai‘i, 96813.

II. APPLICABLE STATUTES AND REGULATIONS

5. Pursuant to SDWA Sections 1421 to 1429, 42 U.S.C. §§ 300h to 300h-8, EPA has promulgated regulations at 40 C.F.R. Part 144 establishing minimum requirements for UIC programs to prevent underground injection that endangers drinking water sources.

6. “Underground injection” means the subsurface emplacement of fluids by well injection. 42 U.S.C. § 300h(d)(1); 40 C.F.R. § 144.3.

7. “Well injection” means the subsurface emplacement of fluids through a well. 40 C.F.R. § 144.3.

8. “Well” means, in relevant part, a dug hole whose depth is greater than the largest surface dimension. 40 C.F.R. § 144.3.

9. A “cesspool” is a “drywell,” which in turn is a “well,” as those terms are defined in 40 C.F.R. § 144.3.

10. “Large capacity cesspools” (“LCCs”) include “multiple dwelling, community or regional cesspools, or other devices that receive sanitary wastes, containing human excreta, which have an open bottom and sometimes perforated sides.” 40 C.F.R. § 144.81(2). LCCs do

//

1 not include single-family residential cesspools or non-residential cesspools which receive solely
2 sanitary waste and have the capacity to serve fewer than 20 persons per day. *Id.*

3 11. UIC program regulations classify LCCs as Class V UIC injection wells. 40 C.F.R.
4 § 144.80(e).

5 12. Class V UIC injection wells are considered a “facility or activity” subject to
6 regulation under the UIC program. 40 C.F.R. § 144.3.

7 13. “Owner or operator” means the owner or operator of any “facility or activity”
8 subject to regulation under the UIC program. 40 C.F.R. § 144.3.

9 14. The “owner or operator” of a Class V UIC well must comply with Federal UIC
10 requirements in 40 C.F.R. Parts 144 through 147, and must also comply with any other measures
11 required by the owner’s and operator’s State or EPA Regional Office UIC Program to protect
12 underground sources of drinking water. 40 C.F.R. § 144.82.

13 15. Owners or operators of existing LCCs were required to have closed those LCCs
14 no later than April 5, 2005. 40 C.F.R. §§ 144.84(b)(2) and 144.88.

15 16. Pursuant to Section 1422(c) of the SDWA, 42 U.S.C. § 300h-1(c), and 40 C.F.R.
16 § 147.601, EPA administers the UIC program in the State of Hawai‘i. This UIC program consists
17 of the program requirements of 40 C.F.R. Parts 124, 144, 146, 147 (Subpart M), and 148.

18 17. Pursuant to Section 1423(c)(1) of the SDWA, 42 U.S.C. § 300h-2(c)(1), and 40
19 C.F.R. § 19.4, EPA may issue an administrative order either assessing a civil penalty of not more
20 than \$21,916 per day per violation up to a maximum of \$273,945, or requiring compliance, or
21 both, against any person who violates the SDWA or any requirement of an applicable UIC
22 program.

23 III. ALLEGATIONS

24 18. Respondent is an association and thus qualifies as a “person” within the meaning
of Section 1401(12) of the SDWA, 42 U.S.C. § 300f(12), and 40 C.F.R. § 144.3.

1 19. Respondent owns or leases at least 3000 properties in the state of Hawai'i, at least
2 some of which contain LCCs.

3 20. Between at least November 2012 and July 26, 2017, Respondent owned at least
4 one cesspool meeting the definition of LCC as that term is defined at 40 C.F.R. § 144.81(2).

5 21. The LCC referenced in Paragraph 20 was located at 99-1622 Piimauna Drive,
6 Volcano, HI 96785.

7 22. Hawaiian International Sporting Club Inc., which leases the Property from
8 Respondent and operates the Property, closed the LCC referenced in Paragraph 20 and replaced
9 it with a septic system that was approved for use by the State of Hawai'i Department of Health
10 on July 26, 2017.

11 23. The LCC referenced in Paragraph 20 was not closed by April 5, 2005.

12 24. Respondent's failure to close the LCC referenced in Paragraph 20 by April 5,
13 2005 constitutes a violation of 40 C.F.R. §§ 144.84(b)(2) and 144.88.

14 IV. SETTLEMENT TERMS

15 A. General Provisions

16 25. For the purposes of this proceeding, Respondent (1) admits the jurisdictional
17 allegations contained in this CA/FO; (2) neither admits nor denies the specific factual allegations
18 contained in this CA/FO; (3) consents to the assessment of the penalty specified and to the
19 specified compliance obligations contained in this CA/FO; and (4) and waives any right to
20 contest the allegations or to the right to appeal the proposed final order accompanying the
21 consent agreement. 40 C.F.R. § 22.18(b)(2).

22 26. This CA/FO shall be the entire agreement between the Parties to resolve EPA's
23 civil claims and causes of action alleged under 40 C.F.R. §§ 144.84(b)(2) and 144.88. Full
24 compliance with this CA/FO shall constitute settlement of Respondent's liability for federal civil
claims for the SDWA violations identified in Section III of this CA/FO.

1 27. The provisions of this CA/FO shall apply to and be binding upon Respondent, its
2 officers, directors, agents, servants, authorized representatives, employees, and successors or
3 assigns. Action or inaction of any persons, firms, contractors, employees, agents, or corporations
4 acting under, through, or for Respondent shall not excuse any failure of Respondent to fully
5 perform its obligations under this CA/FO.

6 28. Issuance of this CA/FO does not in any manner affect the right of EPA to pursue
7 appropriate injunctive or other equitable relief or criminal sanctions for any violations of law,
8 except with respect to those claims against Respondent described in Paragraph 25 that have been
9 specifically resolved by this CA/FO.

10 29. This CA/FO is not a permit or modification of a permit, and does not affect
11 Respondent's obligation to comply with all federal, state, local laws, ordinances, regulations,
12 permits, and orders. Issuance of, or compliance with, this CA/FO does not waive, extinguish,
13 satisfy, or otherwise affect Respondent's obligation to comply with all applicable requirements
14 of the SDWA, regulations promulgated thereunder, and any order or permit issued thereunder,
15 except as specifically set forth herein.

16 30. EPA reserves any and all legal and equitable remedies available to enforce this
17 CA/FO, as well as the right to seek recovery of any costs and attorneys' fees incurred by EPA in
18 any actions against Respondent for noncompliance with this CA/FO.

19 31. Unless otherwise specified, the Parties shall each bear their own costs and
20 attorneys' fees incurred in this proceeding.

21 32. This CA/FO may be executed and transmitted by facsimile, email or other
22 electronic means, and in multiple counterparts, each of which shall be deemed an original, but all
23 of which shall constitute an instrument. If any portion of this CA/FO is determined to be
24 unenforceable by a competent court or tribunal, the Parties agree that the remaining portions
shall remain in full force and effect.

1 33. The undersigned representative of each party certifies that he or she is duly and
2 fully authorized to enter into and ratify this CA/FO.

3 B. Penalty

4 34. Respondent agrees to the assessment of a civil penalty in the amount of ninety-
5 nine thousand five hundred and thirty-one dollars (\$99,531) for the violation of the SDWA at 99-
6 1622 Piimauna Drive, Volcano, HI 96785, alleged in Section III of this CA/FO.

7 35. Respondent shall pay the assessed penalty no later than thirty (30) days from the
8 Effective Date of this CA/FO.

9 36. Respondent may pay the penalty by check (mail or overnight delivery), wire
10 transfer, automated clearing house, or online payment. Payment instructions are available at: [
11 HYPERLINK "<http://www2.epa.gov/financial/makepayment>"]. Payments made by a cashier's check or
12 certified check must be payable to the order of "Treasurer, United States of America" and
delivered to the following address:

13 U.S. Environmental Protection Agency
14 Fines and Penalties
15 Cincinnati Finance Center
16 P.O. Box 979077
17 St. Louis, Missouri 63197-9000

18 37. Concurrent with making the payment, Respondent must provide a letter with
19 evidence of the payment made pursuant to Paragraphs 38 through 40, accompanied by the title
and docket number of this action, to the EPA Region IX Regional Hearing Clerk, via United
States mail, at the following addresses:

20 Regional Hearing Clerk
21 U.S. Environmental Protection Agency
22 Region IX - Office of Regional Counsel
23 75 Hawthorne Street (ORC-1)
24 San Francisco, CA 94105

Respondent shall also send copies of the letter to the EPA Region IX Enforcement Division
Enforcement Officer and the EPA Region IX Office of Regional Counsel attorney pursuant to
Paragraph 58.

1 38. In accordance with the Debt Collection Act of 1982 and 40 C.F.R. Part 13,
2 interest, penalty charges, and administrative costs will be assessed against the outstanding
3 amount that Respondent owes to EPA for Respondent's failure to pay the civil administrative
4 penalty by the deadline specified in Paragraph 36.

5 39. Interest on delinquent penalties will be assessed at an annual rate that is equal to
6 the rate of current value of funds to the United States Treasury (i.e., the Treasury tax and loan
7 account rate) as prescribed and published by the Secretary of the Treasury in the Federal Register
8 and the Treasury Fiscal Requirements Manual Bulletins. 40 C.F.R. § 13.11(a)(1).

9 40. A penalty charge will be assessed on all debts more than 90 days' delinquent. The
10 penalty charge will be at a rate of 6% per annum and will be assessed monthly. 40 C.F.R. §
11 13.11(c).

12 41. In addition, administrative costs for handling and collecting Respondent's
13 overdue debt will be assessed based on either actual or average cost incurred, and will include
14 both direct and indirect costs. 40 C.F.R. § 13.11(b).

15 42. Failure to pay any civil administrative penalty by the deadline may also lead to
16 any or all of the following actions:

17 a. The debt being referred to a collection agency, a credit reporting agency, or to
18 the Department of Justice for filing of a collection action in the appropriate
19 United States District Court. 40 C.F.R. §§ 13.13, 13.14, and 13.33. In any
20 such collection action, the validity, amount, and appropriateness of the
21 assessed penalty and of this CA/FO shall not be subject to review.

22 b. The department or agency to which this matter is referred (e.g., the
23 Department of Justice, the Internal Revenue Service) may assess
24 administrative costs for handling and collecting Respondent's overdue debt in
addition to EPA's administrative costs.

c. EPA may (i) suspend or revoke Respondent's licenses or other privileges; or

(ii) suspend or disqualify Respondent from doing business with EPA or engaging in programs EPA sponsors or funds. 40 C.F.R. § 13.17.

43. Respondent shall tender any interest, handling charges, late penalty payments, and stipulated penalties in the same manner as described in Paragraphs 40 through 41.

C. Compliance

44. Respondent shall perform a compliance audit (“Audit”) of its properties in the state of Hawai‘i to identify LCCs. Respondent shall close any LCCs identified in the Audit in accordance with this Agreement.

45. EPA and Respondent agree that violations reported or otherwise disclosed to EPA under, and in accordance with, this CA/FO and the applicable provisions of EPA’s Incentives for Self-Policing: Discovery, Disclosure, Correction and Prevention of Violations (“Audit Policy”), 65 Fed. Reg. 19,618 (Apr. 11, 2000), shall be eligible for 100% mitigation of gravity-based penalties. The parties further agree that this CA/FO is intended to serve the objectives of, and be interpreted in harmony with, the Audit Policy. In the event of an actual or perceived conflict between the terms of this CA/FO and of the Audit Policy, the parties agree that the terms of this CA/FO shall prevail in regard to whether or not the criteria set forth in the Audit Policy have been met.

46. The Audit shall comply with the following requirements:

a. Scope of Audit: All Target Properties must be audited and an audit report must be prepared that addresses each Target property pursuant to Paragraphs 51. The following definitions apply:

i. Target Properties: This includes all properties owned or leased by Respondent in Hawai‘i that contain or potentially contain an LCC and are not otherwise excluded as Non-Target Properties. All Properties owned and/or operated by Respondent in the state of Hawai‘i shall be treated as Target Properties for purposes of this Audit unless Respondent has

1 sufficient documentation that the property is properly classified as one of the
2 non-Target Properties categories, as set forth in Paragraph 49.c.

3 ii. Non-Target Properties: Non-Target Properties include those that (A) are
4 connected to a sewer system; (B) contain an on-site wastewater treatment
5 facility permitted by the Hawai‘i Department of Health (“HDOH”); (C)
6 contain an HDOH-permitted Individual Wastewater System (“IWS”) that is
7 not a cesspool; (D) are vacant; or (E) are residential properties that contain
8 one or fewer single-family residences or are non-residential properties that
9 have the capacity to serve fewer than 20 persons per day.

10 iii. Sufficient Documentation: Respondent shall rely on Sufficient
11 Documentation to make its determination that a particular property is a
12 Non-Target Property and does not otherwise contain an LCC. Sufficient
13 documentation means:

14 A. For Properties connected to a sewer: written confirmation of the
15 connection from the county or private sewer operator; building plans
16 confirming the connection to a county or private sewer system; or a
17 current sewer bill.

18 B. For properties that contain an on-site wastewater treatment system:
19 an HDOH permit or written documentation from HDOH of approval
20 to operate the wastewater treatment system.

21 C. For properties that contain a non-cesspool IWS: an IWS permit from
22 HDOH or written documentation from HDOH showing that the IWS
23 is permitted.

24 D. For vacant properties: a “Building Value” of zero according to
government tax records as of the Effective Date of this CA/FO.

1 E. For properties that contain one or fewer single-family residences and
2 non-residential properties that have the capacity to serve fewer than
3 20 persons per day, a Tax Map Key code showing that the property
4 contains one or fewer single-family residence, or a certified
5 statement from a representative of Respondent with supervisory
6 authority or oversight over Respondent's personnel with personal
7 knowledge of the property.

8 iv. Respondent shall, at EPA's request, make available for inspection, the
9 documentation relied upon. With the exception of information obtained
10 through databases maintained by a government entity, Respondent shall
11 maintain the documentation relied upon until Respondent has submitted the
12 final LCC Closure Reports pursuant to Paragraph 49.

13 v. Respondent shall submit for EPA's approval a list of Target Properties.
14 Each list must be certified pursuant to Paragraph XX. Target Properties
15 shall be identified by address, Tax Map Key, and land use classification.
16 EPA will respond within 14 days to notify Respondent if it disapproves of
17 the list of Target Properties.

18 **b. Independent Third Party Auditor**

19 i. Third Party Auditor: The Audit shall be conducted by an independent
20 third-party auditor (the "Auditor") who has experience with LCCs.

21 Respondent shall have the Auditor: (a) supervise the preparation of and
22 sign the Audit Completion Reports as required under Paragraph 51 of this
23 CA/FO; and (b) prepare and sign the LCC Closure Reports as required
24 under Paragraph 53 of this CA/FO.

ii. Recordkeeping: Respondent shall include in its written agreement with
the Auditor a provision requiring the Auditor to prepare and maintain

contemporaneous records when supervising or assisting in the conduct of the Audit.

iii. Approval of Auditor: No later than thirty (30) calendar days following the Effective Date of this CA/FO, Respondent shall notify EPA in writing of Respondent's choice of the Auditor, and provide a curriculum vitae and list of past cesspool projects performed by the proposed Auditor. At its sole discretion, EPA may approve or disapprove Respondent's choice of the Auditor, but such approval shall not be unreasonably withheld. Within fifteen (15) calendar days of EPA's receipt of Respondent's notice of its choice of an Auditor, EPA will respond in writing to Respondent's nomination. If EPA notifies Respondent that Respondent's choice of an Auditor is unacceptable, Respondent shall have additional thirty (30) calendar days in which to nominate a different Auditor, and to provide the information required by this Paragraph.

c. Audit Schedule:

i. The Audit will be conducted in three phases: (1) Oahu; (2) Kauai/Maui/Molokai ("KMM"); and (3) the island of Hawai'i ("Big Island"). The term "Audit" as used herein refers collectively to all three phases. All Target Properties will be subject to the Audit.

ii. For the Oahu Phase:

A. Within thirty (30) calendar days of the effective date for this CA/FO, Respondent shall submit to EPA a list of Target Properties in Oahu, pursuant to Paragraph 49.a.iv.

B. The Oahu Audit Completion Date shall be seventy-four (74) calendar days of submission to EPA of the Target Properties list for Oahu. However, if the number of Target Properties in Oahu is

greater than 100, then Respondent may submit a proposed project schedule for EPA's approval. The proposed project schedule shall be submitted with the list of Target Properties for Oahu.

iii. For the KMM Phase:

A. Within sixty (60) calendar days of the effective date for this CA/FO, Respondent shall submit to EPA for approval a list of Target Properties for KMM, pursuant to Paragraph 49.a.iv.

B. The KMM Audit Completion Date shall be seventy-four (74) calendar days of submission to EPA of the Target Properties list for KMM.

iv. For the Big Island Phase:

A. Within one hundred and eighty (180) calendar days of the effective date for this CA/FO Respondent shall submit to EPA for approval a list of Target Properties for the Big Island, pursuant to Paragraph 49.a.iv.

B. The Big Island Audit Completion Date shall be seventy-four (74) calendar days of submission to EPA of the Target Properties list for the Big Island. However, if the number of Target Properties on the Big Island is greater than 60, then Respondent may submit a proposed project schedule for EPA's approval. The proposed project schedule shall be submitted with the list of Target Properties for the Big Island.

d. Audit Procedures:

i. In each phase, the Auditor shall inspect or supervise the inspection of each of the Target Properties for the presence of an LCC. Each inspection may include but is not limited to a visual inspection of the Target Property, a

1 review of property records, permits, water use records, and/or other
2 documentation, and interviews with employees of Respondent, occupants,
3 tenants and/or lessees, as needed to confirm the presence (or absence) and
4 location of an LCC.

- 5 ii. All work will be in accordance with accepted standards of professional
6 engineering procedures as practiced by members of the local engineering
7 profession currently practicing in Hawai'i under similar conditions.

8 47. Audit Completion Reports:

- 9 a. For each phase of the Audit, the Auditor shall prepare a separate Audit
10 Completion Report documenting the findings of the audit of the Target
11 Properties in that phase, including the following:
- 12 i. A description of how the Audit Procedures were followed in completing that
13 phase of the Audit.
- 14 ii. The number of LCCs located on Target Properties in that phase of the Audit,
15 a description of each LCC, and a description of how each LCC was
16 identified and/or confirmed.
- 17 iii. For those Target Properties that were determined not to contain an LCC, a
18 description of how it was determined that the property did not contain an
19 LCC and what, if any, other wastewater treatment system is being used.
- 20 b. The Oahu Audit Completion Report shall be submitted within sixty (60) days of
21 the Oahu Audit Completion Date.
- 22 c. The KMM Audit Completion Report shall be submitted within sixty (60) days of
23 the KMM Audit Completion Date.
- 24 d. The Big Island Audit Completion Report shall be submitted within sixty (60)
days of the Big Island Audit Completion Date.

48. LCC Closures and Schedule:

- a. With the Audit Completion Report for each phase, Respondent shall submit for EPA's approval a plan and schedule for closure of any LCCs identified.
- b. LCCs shall be closed as soon as practicable. Respondent shall commence efforts to close the LCCs identified in each phase within thirty (30) days of submission of the Audit Completion Report for that phase.
- c. LCCs shall be closed in accordance with 40 C.F.R. §§ 144.84(b)(2), 144.88(a) and 144.89(a), and all other applicable closure requirements.

49. Final LCC Closure Reports: Within ten (10) days of obtaining HDOH approval of the Backfill Closure Report for each identified LCC, the Auditor shall submit a Final LCC Closure Report documenting completion of the LCC closure steps to EPA that includes the following:

- a. design plans for any IWSs used to replace the LCCs stamped and approved by HDOH;
- b. HDOH permit to operate an IWS or hookup sewer approvals; and
- c. A copy of the approved backfill closure report.

50. The Audit shall not affect EPA's right to bring a claim or cause of action other than those specified in Section IV of this CA/FO, including a claim or cause of action for an LCC violation that could have been, but was not reported, mitigated, and paid pursuant to this CA/FO.

51. Respondent shall bear all costs associated with the Audit.

D. Third Party Landowners and Lessees

52. Subpart G of Title 40, Part 144 of the CFR imposes liability on any owner or operator of a Class V well (which includes an LCC). 40 CFR § 144.81. The Parties anticipate that at least some properties within the scope of the Audit are owned or operated by third parties, including, *e.g.*, lessees.

1 53. This CA/FO does not alter the rights, obligations, or liabilities of any party other
2 than EPA or Respondent.

3 E. Transfer of Ownership of Audited Properties

4 54. In the event Respondent transfers ownership, title, or control of any real property
5 that it owns or leases as of the Execution Date of this CA/FO prior to the completion of the
6 Audit, Respondent shall make a determination as to whether such property is a Target Property
7 as defined in Paragraph 46(i), if it has not already done so under schedule set forth in this
8 agreement.

9 55. If Respondent determines that such property is a Target Property and the Third
10 Party Auditor identifies one or more LCCs on the property, Respondent shall make efforts to
11 close any LCC on such property soon as practicable.

12 56. EPA and Respondent agree that that any violations identified under Paragraphs 54
13 and 55 shall be eligible for the 100% mitigation of gravity-based penalties described in
14 Paragraph 45.

15 F. Stipulated Penalties

16 57. If Respondent fails to pay the assessed civil administrative penalty specified in
17 Paragraph 37 by the deadline specified in Paragraph 38, Respondent agrees to pay in addition to
18 the assessed penalty, a stipulated penalty of \$250 per day for each day the payment is late.

19 58. Respondent agrees to pay any stipulated penalties within thirty (30) days of
20 receipt of EPA's written demand for such penalties. All penalties shall begin to accrue on the
21 first date of noncompliance, and shall continue to accrue through the date of completion of the
22 delinquent CA/FO requirement. Respondent will use the method of payment specified in
23 Paragraphs 40 and 41, and agrees to pay interest, handling charges and penalties that accrue for
24 late payment of the stipulated penalty in the same manner as set forth in Paragraphs 42 through
44.

1 59. Neither the demand for, nor payment of, a stipulated penalty relieves Respondent
2 of its obligation to comply with any requirement of this CA/FO or modifies or waives any
3 deadlines set forth in this CA/FO.

4 60. EPA may, in the unreviewable exercise of its discretion, elect to pursue any other
5 administrative or judicial remedies in addition to or in lieu of assessing stipulated penalties
6 and/or reduce or waive stipulated penalties due under this CA/FO.

7 G. Force Majeure

8 61. For purposes of this CA/FO, *force majeure* is defined as any event arising
9 from causes that are beyond the control of Respondent, any entity controlled by Respondent, or
10 Respondent's contractors, which delays or prevents the performance of any obligation under this
11 CA/FO despite Respondent's reasonable best efforts to fulfill the obligation. The requirement
12 that Respondent exercise "reasonable best efforts to fulfill the obligation" includes using
13 reasonable best efforts to anticipate any potential *force majeure* event and reasonable best efforts
14 to address the effects of any such event (a) as it is occurring and (b) after it has occurred to
15 prevent or minimize any resulting delay to the greatest extent possible. Examples of *force*
16 *majeure* events include unforeseen environmental, geological, or archaeological conditions,
17 delays caused by necessary government approvals, labor or equipment shortage, and delays
18 caused by third party tenants or landowners. Examples of events that are not *force majeure*
19 include, but are not limited to, increased costs or expenses of any work to be performed under
20 this CA/FO and normal inclement weather.

21 62. If any event occurs that causes or is likely to cause delay in the achievement of
22 any requirement or time frame specified in this CA/FO, Respondent shall notify EPA in writing,
23 within ten business days after learning of such event, of the anticipated length and cause of the
24 delay, whether Respondent believes the delay or anticipated delay constitutes a *force majeure*
event, as defined in Paragraph 56, the measures Respondent has taken and/or will take to prevent
or minimize the delay, and the timetable by which Respondent intends to implement these

1 measures and achieve the requirement or meet the time frame. Respondent shall adopt all
2 reasonable measures to avoid or minimize delay. Submittal of the notice to EPA required by this
3 paragraph does not by itself extend the deadline or timeframe for any requirement specified in
4 this CA/FO.

5 63. If, upon receiving the notice required under Paragraph 57, EPA agrees that the
6 delay or anticipated delay in compliance with this CA/FO has been or will be caused by
7 circumstances that constitute a *force majeure* event as defined in Paragraph 56, EPA may grant
8 an extension of time for compliance for a period of time no longer than any delay resulting from
9 the circumstances causing the delay or anticipated delay.

10 64. Respondent has the burden of demonstrating that the actual or anticipated delay
11 has been or will be caused by a *force majeure* event, that the duration of the delay was or will be
12 warranted under the circumstances, that Respondent exercised or is using its best efforts to avoid
13 and mitigate the effects of the delay or anticipated delay, and that Respondent complied with the
14 requirements of this CA/FO.

15 65. In the event that EPA does not agree that a delay or anticipated delay in achieving
16 compliance with the requirements of this CA/FO have been or will be caused by a force majeure
17 event, EPA will notify Respondent in writing of EPA's decision and the delay or anticipated
18 delay will not be excused.

19 H. Notices

20 66. Unless otherwise specified elsewhere in this CA/FO, all written communications
21 required by this CA/FO shall be addressed as follows:

22 For EPA:

23 Jelani Shareem, Enforcement Officer
24 U.S. Environmental Protection Agency
Region IX - Enforcement Division
75 Hawthorne Street (ENF-3-3)
San Francisco, CA 94105

Kimberly Wells, Attorney Advisor

1 U.S. Environmental Protection Agency
2 Region IX – Office of Regional Counsel
75 Hawthorne Street (ORC-2-3)
3 San Francisco, CA 94105

4 For Respondent:

5 Sheryl Nicholson, Assistant General Counsel
6 Office of the Vice President, Legal Group
Kamehameha Schools
567 South King Street, Suite 310
Honolulu, HI 96813

7
8 For each written communication and/or submittal, Respondent shall identify the case name, the
9 case Docket Number, and the paragraph and/or requirement of this CA/FO under which the
10 submission is being made.

11 67. Respondent shall include the following signed certification made in accordance
12 with 40 C.F.R. § 144.32(b) and (d) with all written communications required by this CA/FO:

13 *I certify under penalty of law that this document and all attachments*
14 *were prepared under my direction or supervision in accordance with*
15 *a system designed to assure that qualified personnel properly gather*
16 *and evaluate the information submitted. Based on my inquiry of the*
17 *person or persons who manage the system, or those persons directly*
18 *responsible for gathering the information, the information submitted*
19 *is, to the best of my knowledge and belief, true, accurate, and*
20 *complete. I am aware that there are significant penalties for*
21 *submitting false information, including the possibility of fine and*
22 *imprisonment for knowing violations.*

23 V. EFFECTIVE DATE

24 68. Pursuant to 40 C.F.R. § 22.45, this CA/FO will be subject to public notice and
comment at least 40 days prior to it becoming effective through the issuance of the final order by
the Regional Judicial Officer.

69. In accordance with 40 C.F.R. §§ 22.18(b)(3) and 22.31(b), this CA/FO shall be
effective on the date that the final order contained in this CA/FO, having been approved and

1 issued by either the Regional Judicial Officer or Regional Administrator, is filed with the
2 Regional Hearing Clerk.

3 FOR THE CONSENTING PARTIES:

4 KAMEHAMEHA SCHOOLS:

5
6 _____
Eric Sonnenberg, General Counsel
7 Office of the Vice President, Legal Group
Kamehameha Schools
8 567 South King Street, Suite 310
Honolulu, HI 96813
9

Date: _____

10 UNITED STATES ENVIRONMENTAL PROTECTION AGENCY:

11
12 _____
Kathleen H. Johnson
13 Director, Enforcement Division, Region IX
U.S. Environmental Protection Agency
14 75 Hawthorne Street
San Francisco, CA 94105
15
16
17
18
19
20
21
22
23
24

Date: _____

75 Hawthorne Street
San Francisco, California 94105

DOCKET NO. UIC-09-2017-

CONSENT AGREEMENT AND FINAL ORDER

Proceedings under Sections 1423(c) of the
Safe Drinking Water Act,
42 U.S.C. § 300h-2(c).

FINAL ORDER

The United States Environmental Protection Agency Region IX (“EPA”), and Trustees of the Estate of Bernice Pauahi Bishop, doing business as Kamehameha Schools, (“Respondent”), having entered into the foregoing Consent Agreement, and EPA having duly publicly noticed the Stipulations and Findings and Final Order regarding the matters alleged therein,

IT IS HEREBY ORDERED THAT:

1. The foregoing Consent Agreement and this Final Order (Docket No. UIC-09-2017-_____) be entered;
2. Respondent pay an administrative civil penalty of **\$99,531** dollars to the Treasurer of the United States of America in accordance with the terms set forth in the Consent Agreement;
3. Respondent comply with all other requirements of the Consent Agreement.

This Final Order is effective on the date that it is filed. This Final Order constitutes full adjudication of the allegations in the Consent Agreement entered into by the Parties in this proceeding.

Date: _____

In re Kamehameha Schools
Page [PAGE] of [NUMPAGES]

U.S. Environmental Protection Agency